

§ 831.1210

an employer-employee relationship exists, and what the local market rate is for such services. For the purpose of this paragraph, to establish that a true employer-employee relationship exists, the annuitant must provide evidence that all statutorily mandated employment requirements are met, including (but not limited to) income tax withholdings, FICA tax deductions and payments, and unemployment insurance. If the annuitant fails to provide evidence of the local market rate for such services, payments may be deducted only if the amount claimed does not exceed the Federal minimum hourly rate in effect on December 31 of the calendar year in which claimed. Absent evidence that it is customary and regular practice in the local labor market to work more hours per week, payment may not be deducted for services provided by an individual in excess of 40 hours a week.

(3) A job-connected expense can be deducted only in the calendar year in which paid.

(4) Claims for items used for both personal and job-related purposes may be deducted only by the prorated amount attributable to the job-related use.

(5) A job-connected expense may not be deducted from income from self-employment if the expense has already been deducted as a business expense.

(6) It is the responsibility of the annuitant claiming job-connected expense to provide adequate documentation to substantiate the amount claimed. Adequate documentation will generally include the following information:

(i) Written recommendation of a physician, vocational rehabilitation specialist, occupational health resource specialist, or other similar professional specialist that the retiree should use the transportation, services, or equipment;

(ii) A description of the item and an explanation of its use by the annuitant in the performance of his or her occupation or business;

(iii) A copy of the receipt of purchase, bill of sale, or leasing agreement for the item claimed with the date, duration of the agreement, and agreed upon price clearly specified;

5 CFR Ch. I (1–1–02 Edition)

(iv) A complete supporting explanation of how the amount claimed for the job-connected expense has been calculated; and

(v) An explanation of the circumstances and calculation of the prorated cost of the item if used for both personal and business use.

(h) *Return from investment allowance.* A disability annuitant may reduce the net earnings from a self-employed business endeavor (adjusted for any interest paid on borrowed capital) by 6 percent of his or her capital investment in that business, owned or borrowed. The capital investment's value is its fair-market value as of December 31 of the year for which the income is being reported.

(i) *Requirement to report income.* All disability annuitants who, on December 31 of any calendar year, are under age 60 must report to OPM their income from wages or self-employment or both for that calendar year. Each year as early as possible, OPM will send a form to annuitants to use in reporting their income from the previous calendar year. The form specifies the date by which OPM must receive the report. OPM will determine entitlement to continued annuity on the basis of the report. If an annuitant fails to submit the report, OPM may stop annuity payments until it receives the report.

§ 831.1210 Annuity rights after a disability annuity terminates.

(a) An individual is entitled to an immediate annuity when the disability annuity stops because of recovery or restoration to earning capacity if the individual is not reemployed in a position subject to civil service retirement coverage and—

(1) Is at least age 50 when the disability annuity stops and had 20 or more years of service at the time of retirement for disability; or

(2) Had 25 or more years of service at the time of retirement for disability regardless of age.

(b) An individual whose annuity stops because of recovery or restoration to earning capacity and who is not eligible for an immediate annuity under paragraph (a) of this section, is

eligible for a deferred annuity upon reaching age 62.

(c) The disability annuity of an individual whose annuity stopped because of recovery or restoration to earning capacity may be reinstated under §831.1212 of this part.

§831.1211 Reinstatement of disability annuity.

(a) When a disability annuity stops, the individual must again prove that he or she meets the eligibility requirements in order to have the annuity reinstated.

(b) When a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of medical evidence (§831.1208(b)), is not reemployed in a position subject to civil service retirement coverage, and, based on the results of a current medical examination, OPM finds that the individual's medical condition has worsened since the finding of recovery and that the original disability on which retirement was based has recurred, OPM will reinstate the disability annuity. The right to the reinstated annuity begins with the date of the medical examination showing that the disability recurred.

(c) OPM will reinstate the disability annuity of a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of Federal reemployment (§831.1208(c)) when—

(1) The results of a current medical examination show that the disabling medical condition that was the basis of the disability retirement continues to exist; and

(2) Within 1 year after the date of reemployment, this medical condition has again caused the individual to be unable to provide useful and efficient service, and the employee has been—

(i) Separated and not reemployed in a position subject to civil service retirement coverage; or

(ii) Placed in a position that results in a reduction in grade or pay below the grade from which the individual retired, or in a change to a non-permanent position. The right to the reinstated annuity begins with the date of the medical examination showing that the disabling medical condition con-

tinues to exist, but not earlier than the first day after separation, or the effective date of the placement in the position which results in a reduction in grade or pay or change to a non-permanent position.

(d) When a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of a voluntary request (§831.1208(e)), is not reemployed in a position subject to civil service retirement coverage, and, based on the results of a current medical examination, OPM finds that the disability has recurred, OPM will reinstate the disability annuity. The right to the reinstated annuity begins with the date of the medical examination showing that the disability recurred, but not earlier than 1 year before the date the request for reinstatement is received by OPM.

(e) When a disability annuitant whose earning capacity has been restored but who is not reemployed in a position in which he or she is subject to civil service retirement coverage, and who (except in the case of a National Guard technician whose annuity was awarded under 5 U.S.C. 8337(h)), has not recovered from the disability for which retired, loses his or her earning capacity, as determined by OPM, before reaching age 62, OPM will reinstate the disability annuity. The reinstated annuity is payable from January 1 of the year following the calendar year in which earning capacity was lost. Earning capacity is lost if, during any calendar year, the individual's income from wages or self-employment or both is less than 80 percent of the current rate of basic pay of the position held at retirement.

(f) A reinstated annuity is the same type as the original annuity and is paid at the rate of annuity to which the annuitant was entitled on the date his or her disability annuity was last discontinued.

(g) Reinstatement of the disability annuity ends the right to any other annuity based on the same service, unless the annuitant makes a written election to receive the other annuity instead of the disability annuity.

(h) When OPM reinstates an employee's disability annuity, the agency must offset the employee's pay by the